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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of

Alexander Conrad, et al.

Ex Parte Appeal No. 97-31-1

Serial No. 08/421,810

Examiner: E. Holloway III

Filed April 13, 1995

Group Art Unit: 2211

Entitled: INTELLIGENT LOCATOR SYSTEM

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BOARD OF PATENT
AND INTERFERENCE
SEP 25 1998

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Pittsburgh, Pennsylvania 15219
September 17, 1998

OFFICE OF PETITIONS
A/C PATENTS

Assistant Commissioner for Patents
Washington, DC 20231

PETITION UNDER 37 C.F.R. § 1.181(a)(3) and 1.183

Sir:

Applicant hereby petitions the Commissioner to exercise his supervisory authority by directing entry of applicant's Amendment dated March 4, 1998 and filed on that date with mail certification. This application is currently under Appeal on the merits.

Applicant's Notice of Appeal was filed with mail certification on July 29, 1996.

Applicant's Appeal Brief was filed with mail certification on January 9, 1997. The Examiner's Answer is dated April 4, 1997. Appellant's Reply Brief filed with mail certification on June 4, 1997.

On May 6, 1997, United States Patent No. 5,627,524 was issued in the name of Fredrickson, et al. on an application filed March 2, 1995 which is a continuation of an application filed Jun 7, 1993. Applicant's filing date pursuant to 35 U.S.C. § 120 is October 7, 1992.

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Applicant would be entitled to Senior Party Status based on the filing date in an interference.

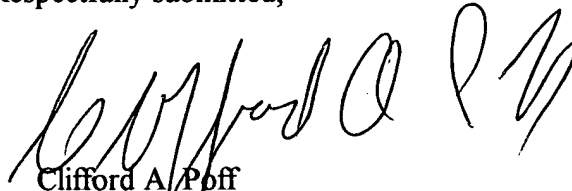
On May 4, 1998 Applicant filed with mail certification an Amendment presenting claims copied from the Fredrickson, et al. Patent No. 5,627,524 copying claims and presenting a claim chart for the stated purpose of provoking an interference. On May 22, 1998 the Board of Patent Appeals and Interferences issued an Order remanding the application to the Examiner "to consider the appropriateness of the Amendment filed May 19, 1998". On June 8, 1998 the Examiner issued an Advisory Action refusing to enter the Amendment because "the proposed claims raise new issues which require further consideration or search (37 C.F.R. §1.116(c)). The Examiner commented that "the Amendment necessitates a new search, raises new issues of new matter, presents additional claims without canceling a corresponding number of finally rejected claims, raises the new issue of interference, and does not simplify the issues for appeal." Applicant filed a Request for Reconsideration with mail certification on July 24, 1998. On August 13, 1998 the Board of Patent Appeals and Interferences issued an Order remanding the application to the Examiner. On September 17, 1998 the Examiner issued a decision again refusing entry of Applicant's Amendment to provoke an interference for the reasons set forth in the Examiner's previous response.

The facts numerated above demonstrate that the Applicant could not have sought an interference anytime prior to May 6, 1997 which is after Applicant's Appeal Brief and Examiner's Answer were filed. The Examiner's position denying entry of the Amendment under 37 C.F.R. §1.116(c) is inequitable in that it denies Applicant access to an interference to which it is entitled under 37 C.F.R. §1.607 merely based on the presence of the final rejection and that the case is on appeal.

Accordingly, Applicant submits this Petition for the purpose of requesting that the Commissioner exercise his supervisory authority and direct that Applicant's Amendment filed May 19, 1998 be entered and that a determination be made whether there is interfering subject matter in the application and the patent which is patentable to the applicant subject to a judgment in an interference pursuant to 37 C.F.R. §1.607(b). The denial of consideration of Applicant's Amendment denies the Applicant the benefit of 35 U.S.C. §102(g).

In the alternative, Applicant Petitions the Commissioner to exercise his supervisory authority to suspend and grant entry of Applicant's Amendment dated of May 19, 1998 and determine whether there is interfering subject matter 37 C.F.R. §1.116(c). Attached hereto is a check in the amount of \$130.00 for payment of the Petition Fee pursuant to 37 C.F.R. §1.183.

Respectfully submitted,



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Mail Certification

I hereby certify that this correspondence is being deposited as first class mail with the U.S. Postal Service postage prepaid addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on September 17, 1998

By: Debra J. Koch Date: September 17, 1998
Debra J. Koch